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WATER POLLUTION AT AUBURN, NEW YORK, DECIDED TO BE A VIOLATION OF THE STATE PENAL CODE¹

BY J. WALTER ACKERMAN²

The City of Auburn, New York, derives its water supply from Owasco Lake, one of the so-called Finger Lakes of Central New York. It has a drainage area of approximately 200 square miles, and a surface area of 10 square miles. The tributary area has normally rural population, with a few villages on its upper reaches.

The Village of Moravia, of about 1500 inhabitants, has a high school with approximately 400 students. The Trustees of this high school caused a sewer to be constructed from the school building to Mill Creek, one of the tributaries of the main inlet stream of Owasco Lake. This building was about $4\frac{1}{2}$ miles from the head of the lake. The water supply for the City of Auburn, which has a population of about 35,000, is taken at the other end of the lake, a distance of approximately 14 miles from the high school.

In October and November, 1907, twenty cases of typhoid fever developed on the watershed in and about Moravia. The major portion was in Moravia, and a number of them were students at the high school. The sewer was so situated that the feces from the village high school were discharged in the winter time, at low periods of water, upon the edge of the stream and collected there in large masses until the spring freshets carried them away.

The following spring an epidemic of typhoid fever occurred in Auburn, forty-five cases being reported, and there were twelve deaths. Allowing the usual percentage of fatality, this would indicate that there were probably upwards of a hundred cases.

This appeared so important that investigations were made, and eliminating all other sources of possible infection it was assumed that the Auburn epidemic came from the Moravia typhoid. While

¹ Discussion of this paper is desired and should be sent to the Editor.

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at this time this was a protected watershed, under the protection of rules and regulations promulgated by authority of the statute under the public health law, these rules were for local application. While the law gave the Auburn Water Board, which is charged with the responsibility for the supply, some police authority, it did not give the Board adequate jurisdiction to remove violations of this law. So the Board determined to institute an action against the Trustees of the Village High School of Moravia. Before this was done, however, a series of experiments was carried on by the author, at the suggestion of Prof. George C. Whipple, now of Harvard University, to determine what effect wind might have on surface velocity of the lake, to see whether it was possible that polluting material might be carried across from one end of the lake to the other within a period sufficient to transmit it within the lifetime of pathogenic bacteria. For a long series of experiments in which submerged floats were used, see article in the 1913 PROCEEDINGS of the American Water Works Association, page 291. It was proved that there was set up in the water a velocity from 1 to 3 per cent of that of the wind, and of the same direction as the wind. As wind velocities operate over wide areas, it was possible to take advantage of the anemometer records of the State Meteorological Station at Ithaca, New York, only 30 miles away. It was found that there were plenty of periods when the wind was blowing with a sufficient velocity, and continuous direction, to bring polluting material from Moravia to the place where Auburn secures its water in from three to four days. Other circumstances about the case were equally positive, and in order that definite and immediate action might be obtained, the case was brought by indictment, by The People against the Trustees of the Village High School. It was under Sections 1530 and 1532 of the Penal Code of the State of New York, as explained in the 1913 PROCEEDINGS of the Association.

The case was brought, and in the first instance was a mis-trial. In the second instance, the People were given the decision. The District Attorney was assisted by Prof. C.-E. A. Winslow, Prof. George C. Whipple, Dr. William P. Mason, Dr. F. M. Meder, Dr. Willis W. Waite, and Nicholas S. Hill, Jr. The decision under the Penal Code gave an immediate injunction against the Trustees of the Village High School, restraining them from putting any more sewage into the stream. This is the advantage of trial by injunction, and for a crime. (See 1914 PROCEEDINGS of the American Water Works Association, page 688).

The judgment of the court in the first instance was as follows:

The judgment of this Court is, that the defendant, the Board of Education of the Union Free School, District No. 1, of the Town of Moravia, County of Cayuga, State of New York, be sentenced to pay the plaintiff, The People of the State of New York, a fine of \$500. And in addition thereto, it is further

Ordered, Adjudged and Decreed, that the nuisance described in the Third Count of the Indictment be abated. And the Sheriff of the County of Cayuga is hereby Ordered and Directed to abate the said nuisance, by so breaking or stopping up the outlet sewer leading from the school building, or stopping the use of the toilet closets in said school building, as to prevent the discharge of human excreta from said sewer or closets into said Mill Creek, or in the bed, or on the banks thereof, or into Owasco Inlet or Owasco Lake.

The third count of the indictment is based upon the fourth subdivision of the definition of a public nuisance, in that it is charged that the conditions render a considerable number of persons insecure in life or the use of property.

The above verdict of guilty and order of the court, found in the Supreme Court, in March, 1914, was appealed from by the School Board. The Appellate Division of the Supreme Court, at Rochester, handed down a decision on May 26, 1916, sustaining the conviction of the defendants, which judgment was duly entered in Cayuga County Clerk's Office on May 31, 1916. Later, the judgment was satisfied by payment of the fine of \$500. Nevertheless, the defendant continued its appeal to the Court of Appeals, where it was finally reached for argument on December 3, 1917. On December 18, 1917, the Court of Appeals unanimously affirmed the judgment of the Appellate Division, without opinion. The final judgment of the Supreme Court making the judgment of the Court of Appeals the judgment of the Supreme Court was granted and entered on December 29, 1917. That judgment finally terminated the case, and prevented further appeal.

This is a clean-cut case of pollution, carried through all the courts to a final unanimous judgment, and represents a method of attacking this problem which, if it has been used at all in other cases, has been rarely employed; for at the first trial of this case this was the first time, so far as the Auburn Board and its advisers were able to learn, that this method was used. It is simply reported here to get on record the general facts in the case, with its final favorable termination.